

JUN 22 2006

**SECRETARY, BOARD OF
OIL, GAS & MINING**

Docket No. 2006-007
Cause No. S/015/047

Curtis R. Larkin, appeared as representative of Gypsum Resources, Development, Inc. pursuant to the April 26, 2006 Order of the Board waiving its rule, codified at Utah Administrative Code R641-102-200, requiring corporations to appear at hearings through legal counsel. No other representative of GRD was present at the hearing. Michael S. Johnson,

Assistant Attorney General, represented the Board; and Steven F. Alder, Assistant Attorney General, represented the Division of Oil, Gas, and Mining (Division). At the hearing, Paul Baker, Reclamation Specialist for the Division, and Susan White, Mining Program Coordinator for the Division, testified on behalf of the Division. The Petitioner and Division filed a Stipulation with the Board setting forth conditions upon which the Division would not oppose the request of the Petitioner. Mr. Ray Peterson, Emery County Public Land Coordinator, appeared for Emery County and gave a statement to the Board indicating Emery County's support for the Petitioner's Request subject to the Stipulation with the Division. Ms. Terry Snyder, AML Coordinator and Surface Management Officer, appeared for the Bureau of Land Management, and provided a statement in support of the Request subject to the conditions of the Stipulation.

NOW THEREFORE, the Board, having fully considered the testimony of the witnesses, the evidence admitted, and the Stipulation filed by the parties, being fully advised, and good cause appearing, hereby makes and enters the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. Notices of the time, place, and purpose of the May 24, 2006 hearing were mailed to all interested parties, and were duly published in newspapers of general circulation pursuant to the requirements of Utah Administrative Code ("U.A.C.") Rule R641-106-100 (2005). Copies of the Request for Agency Action were likewise mailed to all interested parties pursuant to U.A.C. Rule R641-104-135. No protests to the request for Agency Action were received.

2. Curtis Larkin and Diane Larkin are the sole shareholders of GRD and are its sole officers. GRD ceased operation in 2001 and is presently engaged only in winding up its affairs.

3. The reclamation work which is the subject of GRD's underlying Request for Agency Action in this Cause is for a small mining operation that was not required to have a reclamation bond held by the Division but did have a \$10,000 performance bond held by Zions Bank for the benefit of the Bureau of Land Management.

4. The Petitioner has requested an extension of time under R647-3-112(5) Utah Administrative Code which provides that "[t]he Division will require complete reclamation of the mine site when the suspension period exceeds 10 years, unless the operator appeals to the Board prior to the expiration of the 10 year period and shows good cause for a longer suspension period."

5. Petitioner has signed a written Stipulation with the Division and therein agreed to limit his request in conformance with the following conditions:

- A. Prior to the hearing the Petitioner will complete the addition of the Division as a holder of the reclamation surety, and will arrange for payment of the past due permit fees in the amount of \$400.00 (without penalties).
- B. The GRD request for an extension of the permit shall provide that if an extension of the suspension period is granted, such extension shall require that the Petitioner shall:
 - (a) commence reclamation of the mine site no later than October 1, 2006, and complete reclamation no later than November 1, 2006; or (b) complete all work necessary to file claims and otherwise perfect its rights to commence mining on the BLM lands within the permit area by November 1, 2006, execute a contract with a

bona fide and licensed contractor providing for mining operations to begin prior to December 31, 2006, and provide additional surety, if any, as required by the Division.

- C. The Petitioner will further consent to an Order of the Board as a condition to the extension of suspension period, providing that in the event the conditions under paragraph B have not been fully complied with by November 1, or the petitioner fails to proceed with mining operations prior to December 31, 2006; then upon 5 days notice to the Petitioner and without further hearing, the reclamation bond shall be immediately forfeited to the Division, and the Division will be authorized to immediately begin reclamation of the lands affected by the mining activities for which the bond has been provided, and that exercise of such remedy by the Division shall be without prejudice to pursue any other remedies, and to recover any and all costs of reclamation not covered by the bond.

6. The Petitioner further agreed at the hearing to add to the above as a further condition of his request that GRD will add the Division as a joint holder of the reclamation surety held by BLM within 30 days of the hearing.

7. The mining operations have been suspended for less than 10 years prior to the filing of the Request for Agency action in this matter, and good cause appears to grant an extension of the suspension subject to the conditions of the Stipulation.

CONCLUSIONS OF LAW

1. Due and regular notice of the time, place, and purposes of the May 24, 2006 hearing was given to all interested parties in the form and manner and within the time required

by law and the rules and regulations of the Board.

2. Due and regular notice of the filing of the Request for Agency Action was given to all interested parties in the form and manner and within the time required by law and the rules and regulations of the Board.

3. The Board has jurisdiction over the parties and subject matter of this Request for Agency Action pursuant to Chapter 6 of Title 40 of the Utah Code Annotated, and has the power and authority pursuant to the above-referenced statutes to make and promulgate the order herein set forth.

4. Based upon the factual findings set forth above, there is good cause as required by R647-3-112(5) Utah Administrative Code for the extension of the suspension period for the small mining operations on the conditions set forth in the stipulation of the parties filed in this matter as orally modified at the hearing, which conditions are set forth in more particularity in the findings of fact.

ORDER

IT IS THEREFORE ORDERED that:

A. The Board grants the Petitioner's Request for an extension of the time under Utah Administrative Rule R647-3-112(5) in conformance with the Stipulation agreed to by the Petitioner and the Division which was filed by the parties on May 22, 2006 and as orally amended in the hearing to provide that GRD shall add the Division and BLM as joint holders of the reclamation surety within 30 days of this hearing or within such other time as agreed to by the parties.

B. The Board has considered and decided this matter as a formal adjudication, pursuant to the Utah Administrative Procedures Act, Utah Code Ann. §§ 63-46b-6 through -10 (Supp. 2003), and the Rules of Practice and Procedure before the Board of Oil, Gas and Mining, Utah Admin. Code R641 (2003).

C. This Findings of Fact, Conclusions of Law, and Order ("**Order**") is based exclusively upon evidence of record in this proceeding or on facts officially noted, and constitutes the signed written order stating the Board's decision and the reasons for the decision, as required by the Utah Administrative Procedures Act, Utah Code Ann. § 63-46b-10 (Supp. 2003), and the Rules of Practice and Procedure before the Board of Oil, Gas and Mining, Utah Admin. Code R641-109 (2003); and constitutes a final agency action as defined in the Utah Administrative Procedures Act and Board rules.

D. **Notice of Right of Judicial Review by the Supreme Court of the State of Utah.** As required by Utah Code Ann. §63-26b-10(e) to -10(g), the Board hereby notifies all parties to this proceeding that they have the right to seek judicial review of this Order by filing an appeal with the Supreme Court of the State of Utah within 30 days after the date this Order is entered. Utah Code Ann. § 63-46b-14(3)(a) and -16 (1998).

E. **Notice of Right to Petition for Reconsideration.** As an alternative, but not as a prerequisite to judicial review, the Board hereby notifies all parties to this proceeding that they may apply for reconsideration of this Order. Utah Code Ann. § 63-46b-13 (Supp. 2003). The Utah Administrative Procedures Act provides:

(1) (a) Within 20 days after the date that an order is issued for which review by the agency or by a superior agency under Section 63-46b-12 is unavailable, and if the order would otherwise constitute final agency action, any party may file a written request

for reconsideration with the agency, stating the specific grounds upon which relief is requested.

(b) Unless otherwise provided by statute, the filing of the request is not a prerequisite for seeking judicial review of the order.

(2) The request for reconsideration shall be filed with the agency and one copy shall be sent by mail to each party by the person making the request.

(3)(a) The agency head, or a person designated for that purpose, shall issue a written order granting the request or denying the request.

(b) If the agency head or the person designated for that purpose does not issue an order within 20 days after the filing of the request, the request for reconsideration shall be considered to be denied.

Utah Code Ann. § 63-46b-13 (Supp. 2003).

The Rules of Practice and Procedure before the Board of Oil, Gas and Mining entitled "Rehearing and Modification of Existing Orders" state:

Any person affected by a final order or decision of the Board may file a petition for rehearing. Unless otherwise provided, a petition for rehearing must be filed no later than the 10th day of the month following the date of signing of the final order or decision for which the rehearing is sought. A copy of such petition will be served on each other party to the proceeding no later than the 15th day of that month.

Utah Admin. Code R641-110-100 (2003).

See Utah Administrative Code R641-110-200 for the required contents of a petition for rehearing. The Board hereby rules that should there be any conflict between the deadlines provided in the Utah Administrative Procedures Act and the Rules of Practice and Procedure before the Board of Oil, Gas and Mining, the later of the two deadlines shall be available to any party moving to rehear this matter. If the Board later denies a timely petition for rehearing, the aggrieved party may seek judicial review of the order by perfecting an appeal with the Utah Supreme Court within 30 days thereafter.

F. The Board retains exclusive and continuing jurisdiction of all matters covered by this Order and of all parties affected thereby; and specifically, the Board retains and reserves exclusive and continuing jurisdiction to make further orders as appropriate and authorized by statute and applicable regulations.

G. The Chairman's signature on a facsimile copy of this Order shall be deemed the equivalent of a signed original for all purposes.

ENTERED this 22 day of June 2006.

STATE OF UTAH
BOARD OF OIL, GAS AND MINING


J. James Peacock, Chairman

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing "Findings of Fact, Conclusions of Law, and Order" for Docket No. 2006-007, Cause No. S/015/047, to be mailed with postage prepaid, this 22 day of June, 2006, to the following:

Curtis R. Larkin
Gypsum Resource Development, Inc.
1947 North 2050 East
Layton, Utah 84040

Michael S. Johnson
Assistant Attorney General
Attorney for the Board of Oil, Gas, and Mining
1594 West North Temple, Suite 300
Salt Lake City, Utah 84116
(Hand Delivered)

Steven F. Alder
Assistant Attorney General
Attorney for the Division of Oil, Gas and Mining
1594 West North Temple, Suite 300
Salt Lake City, Utah 84116
(Hand Delivered)

Mary Ann Wright, Associate Director
Utah Division of Oil, Gas and Mining
1594 West North Temple, Suite 1210
Salt Lake City, Utah 84116
(Hand Delivered)


